



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,426	08/05/2008	Dina L. Richman	60336-USA	4708
7590 01/07/2011				
John M Sheehan FMC Corporation 1735 Market Street Philadelphia, PA 19103				
EXAMINER				
LEVY, NEIL S				
ART UNIT		PAPER NUMBER		
1615				
MAIL DATE		DELIVERY MODE		
01/07/2011		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/585,426

**Applicant(s)**

RICHMAN ET AL.

**Examiner**

NEIL LEVY

**Art Unit**

1615

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 October 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 6, 11, 16 and 21-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 6, 11, 16 and 21-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-945)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 103***

Claims 1, 6, 11, 21, 22 stand rejected under 35 U.S.C. 102(a & e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over ASRAR 6660690

See compositions 77 for Example 1.

Seeds are planted at households loci at glass house, as ornamentals, fields, and trees (col 22, lines 11-16) thus for household pest control.

Pests controlled include cockroach, termite, ant, fire ant, mosquito and others (col 23, lines 13-col 24, line 3). The actives are 1:1000 to 1000:1 (col 25, lines 5-13).

Compositions are at col 26, lines 22-28, at 0.5 to 99% as suspensions or slurries, and 0.01-10% at weight of seeds (col 25, top). At col. 28, lines 1-22, we learn that the instant claimed concentrations are within the range of ASRAR, & easily determined by one of ordinary skill in the art. Such a One would find, given the guidance of an example, an easily determinable ratio & concentration to use, of one of the few preferred pyrethroids, bifenthrin, (col. 8, lines 8,9) with one of the few neo-nicotinoids, including imidacloprid, to optimize control of a target acarid or insect pest.

Claims 1, 6, 11, 16, & 21-26 stand rejected under 35 U.S.C. 103(a) as being unpatentable over SEMBO 6555092 in view of SELBY et al US 20040053786A1 and LAHM et al US 20040198984A1

Pyrethroids and neonicotinosis (col 2, lines 32-50) of the instant are taught as pesticides combinable with nitroguanidine to control household pests-clothes moths, mosquitoes, flies, cockroach, ants, wasps, termites (col 3, line 50-col 4, lines 26). One of ordinary skill in the art would find it obvious to include additional insecticides in the range of the rate of Sembo's active, 0.01-10% (col. 1, lines 42-43).

A limited number of insecticides are shown, and it would be within the purview of the pesticide applicator to test the combinations, inclusive of the instant, in order to optimize effects.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize pest control means, to use any of art recognized means, as of the SEMBO modified as desired to increase reduced toxicity to handlers & increased toxicity to pests, by optimizing the mix of pesticides to be used.

Testing of the likely combinations, of a specific number of actives, is seen as standard operating procedure to maximize effects, in consideration of the 2007 supreme court decision in *KSR V TELEFLEX* @ 82 USPQ 2d @ 1385.

SELBY provides guidance; household pests [0002] are controlled with mixes of pesticides inclusive of bifenthrin, imidacloprid, & thiamethoxam[0184] & claim 12, using 0.01-5% of actives[0190], The required amounts determinable by the skilled artisan[0193].

LAHM also provides guidance; household pests [0002,00236] of the instant are controlled with mixes of pesticides inclusive of bifenthrin, imidacloprid, clothianidin &

thiamethoxam[0238] using 0.01-5% of actives[0245], The required amounts determinable by the skilled artisan[0247].

Modification of the compositions to apply to control the desired pest are seen as within the purview of the pesticide applicator & formulator to determine given the prior art showings of the use of pesticide mixes of a specific number of actives. The particular active combinations & concentrations are then a matter of testing to determine the optimum combination to achieve desired effect on the particular species of concern.

All the critical elements of the instant are disclosed. The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular species and application method of interest, reduction of toxicity, cost minimization, enhanced, and prolonged, or synergistic effects. Applicant has not provided any objective evidence of criticality, nonobvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed, and the use of ingredient for the functionality for which they are known to be used is not basis for patentability.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT A. WAX can be reached on 571-272-0623. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NEIL LEVY/  
ART UNIT 1615

1/06/2011